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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/571,729	12/07/2006	Lars Milde	GK-EIS-1104/500593.20097	2788

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REED SMITH, LLP  
ATTN: PATENT RECORDS DEPARTMENT  
599 LEXINGTON AVENUE, 29TH FLOOR  
NEW YORK, NY 10022-7650

EXAMINER
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PENDLETON, DIONNE

ART UNIT	PAPER NUMBER
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2615

MAIL DATE	DELIVERY MODE
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06/20/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

Application No.

10/571,729

Applicant(s)

MILDE, LARS

Examiner

Dionne H. Pendleton

Art Unit

2615

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 13 March 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 11-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 11-19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>3/13/2006</u> .   | 6) <input type="checkbox"/> Other: _____                          |

## DETAILED ACTION

### *Drawings*

1. Figure 5 should be designated by a legend such as --Prior Art-- because only that which is old is illustrated. See MPEP § 608.02(g). Corrected drawings in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. **Claim 11** is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 11 recites " ...electroacoustic transducer being displaceable along the longitudinal axis of the second portion of the behind-the-head headband in such a way that the spacing between the electroacoustic transducer and the first or second contact location as well as the spacing between the behind-the-head headband and the head of a wearer of the behind-the-head headband is adjusted."

However, according to the specification, the adjustment to the spacing between the behind-the-head headband and the head of a wearer is completely independent from the adjustment of the transducer along the length of the second portion. Accordingly, Correction and/or clarification is required.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

3. **Claims 11,13,15,17 and 19** are rejected under 35 U.S.C. 102(e) as being anticipated by **Logan (US 6,879,699)**.

Regarding claim 11,

In **figure 1**, Logan teaches a headphone with behind-the-head headband comprising: at least one electroacoustic transducer **19**; a behind-the-head headband **13,15** for holding the electroacoustic transducer, said behind-the-head headband having at least a first **22** and a second contact **22** location for contact against a temporal bone of a wearer of the headphone; spacing between the electroacoustic transducer **19** and the first or second contact location **22** being adjustable **via 26** ; said behind-the-head headband having a first portion **15** and at least one second portion (**22 and 26 and 20**), said first and second portions coming together at an angle location (*see angle indicated by numeral 21*) and a predetermined angle exists between the first and second portions; said electroacoustic transducer **19** being arranged at the second portion of the behind-the-head headband; and *as best understood with regard to the USC 112 second paragraph rejection above*, teaches said electroacoustic transducer being displaceable along the longitudinal axis of the second portion of the behind-the-head headband (**via 26**) in such a way that the spacing between the electroacoustic transducer **19** and the first or second contact location **22** as well as the spacing between the behind-the-head headband **13,15** and the head of a wearer of the behind-the-head headband is adjusted **via 16**.

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Regarding claim 13,

Logan teaches the headphone as set forth in claim 11, wherein at least one second portion (**22 and 26 and 20**) of the behind-the-head headband is designed to be inclined inwardly (*see space **24** which is created by said inward inclination*).

Regarding claim 15,

Logan teaches the headphone as set forth in claim 11, wherein the second portion of the behind-the-head headband is convexly bent (*see space **24** which is created by said convex bend*) .

Regarding claim 17,

Logan teaches in **column 4, lines 19-21**, the headphone as set forth in claim 11, wherein the behind-the-head headband is of an integral configuration.

Regarding claim 19,

Logan teaches that the dimensions of the headband may be altered via adjustment to points **16 and 26**. Said teaching corresponding to the claimed limitation "wherein the behind-the-head headband is of a variable cross-section."

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**4. Claims 12, 14 and 18** are rejected under 35 U.S.C. 103(a) as being unpatentable over **Logan (US 6,879,699)** in view of **Nageno (US 6,385,325)**.

Regarding claim 12,

Logan teaches the headphone as set forth in claim 11. Logan does not clearly teach that the point of connection between the head engaging second portion to which the transducer is mounted, and the behind-the-head headband, is pivotable.

In **Figure 7**, as well as **column 2, lines 30-31, column 6, lines 10-15** and **column 6, lines 41-43**, Nageno teaches a behind-the-head headband **2,3** having a second portion **5** to which a transducer **17** is mounted, and wherein the second portion, and with it, the transducer, is adapted to be pivotable about the behind-the-head headband *as shown in figure 14*, and as broadly claimed. It would have been obvious for one of ordinary skill in the art at the time of the invention to alter the device of Logan per the teachings of Nageno, for the purpose of providing a headband having the capability to be folded into a smaller more compact configuration for easier storage.

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Regarding claim 14,

Logan teaches the headphone as set forth in claim 12, wherein at least one second portion (**22 and 26 and 20**) of the behind-the-head headband is designed to be inclined inwardly (*see space 24 which is created by said inward inclination*).

Regarding claim 18,

Logan teaches the headphone as set forth in claim 11. Logan does not clearly teach that the second portion is more flexible than the first portion. However, In **column 6, lines 2-8**, Nageno teaches that the head engaging portion of the device, i.e., "second portion" is made from a soft elastic material, thereby "more flexible" than the resin material of the behind-the-head portion i.e., "first portion", as claimed.

5. **Claims 16** is rejected under 35 U.S.C. 103(a) as being unpatentable over **Logan (US 6,879,699)**.

Regarding claim 16,

Logan teaches the headphone as set forth in claim 11.

Logan does not clearly teach that the electro-acoustic transducer has a self-locking arresting action. However, the Examiner takes Official Notice, that it is well known in the art and would have been obvious to provide a means to anchoring the connection point between the transducer and second portion i.e., "self-locking arresting



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action" , for the purpose of limiting unsought motion of the transducer element thereby maintaining the desired fit for the wearer.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dionne H. Pendleton whose telephone number is 571-272-7497. The examiner can normally be reached on 9-5:30 M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vivian Chin can be reached on 571-272-7848. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
Dionne Pendleton

  
VIVIAN CHIN  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 2800